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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 **ELLEN RUTH WINGER**
14 **P.O. Box 5870**
Brookings, OR 97415

15 **Registered Nurse License No. RN 537772**
16 **Nurse Practitioner License No. NP 9658**
Nurse Practitioner Furnishings License No. 9658

17 Respondent.

Case No.

2012-58

A C C U S A T I O N

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19 Louise R. Bailey, M.Ed., RN ("Complainant") alleges:

20 **PARTIES**

21 1. Complainant brings this Accusation solely in her official capacity as the Executive
22 Officer of the Board of Registered Nursing ("Board"), Department of Consumer Affairs.

23 **Registered Nurse License**

24 2. On or about October 16, 1997, the Board issued Registered Nurse License
25 Number RN 537772 ("license") to Ellen Ruth Winger ("Respondent"). The license was in full
26 force and effect at all times relevant to the charges brought herein, and will expire on
27 February 28, 2013, unless renewed.

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1 **Nurse Practitioner License**

2 3. On or about February 4, 1998, the Board issued Nurse Practitioner Number NP 9658
3 to Respondent. The license was in full force and effect at all times relevant to the charges
4 brought herein, and will expire on February 28, 2013, unless renewed.

5 **Nurse Practitioner Furnishing License**

6 4. On or about January 19, 2000, the Board issued Nurse Practitioner Furnishing
7 License Number NPF 9658 to Respondent. The license was in full force and effect at all times
8 relevant to the charges brought herein. The license expired on February 28, 2009, and has not
9 been renewed.

10 **JURISDICTION**

11 5. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that
12 the Board may discipline any licensee, including a licensee holding a temporary or an inactive
13 license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing
14 Practice Act.

15 6. Code section 2764 provides, in pertinent part, that the expiration of a license shall not
16 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
17 to render a decision imposing discipline on the license.

18 **STATUTORY PROVISIONS**

19 7. Code section 2761 states, in pertinent part:

20 "The board may take disciplinary action against a certified or licensed nurse or deny an
21 application for a certificate or license for the following:

22 (a) Unprofessional conduct.

23 (4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action
24 against a health care professional license or certificate by another state or territory of the United
25 States, by any other government agency, or by another California health care professional
26 licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that
27 action."

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DATED:

for Anne R. Bailey
LOUISE R. BAILEY, M.
Executive Officer

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Exhibit A
Stipulation for Voluntary Surrender of Registered Nurse
License and Nurse Practitioner Certification
With Prescriptive Privileges

BEFORE THE OREGON
STATE BOARD OF NURSING

DATE: 12/28/10

I certify this to be a true copy of the records on
file with the Oregon State Board of Nursing.

SIGNED: Pat Haines

FINAL ORDER

In the Matter of)

ELLEN R. WINGER, RN, FNP)

License No. 099007574RN)

099007574N1)

Case No. 10-451

The Oregon State Board of Nursing (Board) is the state agency responsible for licensing/certifying, regulating and disciplining certain health care providers, including Registered Nurses and Nurse Practitioners in the State of Oregon. Ellen R. Winger (Licensee) is a Registered Nurse and Family Nurse Practitioner in the state of Oregon.

The Board considered this Matter on September 15, 2010. Licensee did not appear personally. The issue for the Board was whether to approve the Stipulation for Voluntary Surrender of Registered Nurse License and Nurse Practitioner Certification with Prescriptive Privileges signed by Licensee on September 11, 2010 and so dispense with this Matter pursuant to ORS 183.417(3).

Upon review of the Voluntary Surrender of Registered Nurse License and Nurse Practitioner Certification with Prescriptive Privileges and the agency file in this Matter, the Board finds that reasonable factual and legal grounds exist to support approval of the stipulation.

It is hereby **ORDERED** that the Registered Nurse license and Nurse Practitioner certificate with Prescriptive Privileges be surrendered and that the Voluntary Surrender of Registered Nurse License and Nurse Practitioner Certification with Prescriptive Privileges signed by Licensee on September 11, 2010 be approved and by this reference incorporated herein, and

It is further **ORDERED** that Licensee shall meet all of the terms and conditions as stated in the stipulation.

DATED, this 15 day of September 2010

Patricia Markesino RN

Patricia Markesino, RN
Board President

BEFORE THE BOARD OF NURSING
OF THE STATE OF OREGON

DATE: 12/28/10

I certify this to be a true copy of the records on
file with the Oregon State Board of Nursing.

SIGNED

Pat Harmon

In the Matter of

ELLEN RUTH WINGER, RN, FNP
License No. 099007574RN
099007574N1

) STIPULATION FOR
) VOLUNTARY SURRENDER
) OF REGISTERED NURSE
) LICENSE AND NURSE
) PRACTITIONER CERTIFICATION
) WITH PRESCRIPTIVE PRIVILEGES
) Case No. 10-451

Ellen Ruth Winger has been an RN since 1967 and a nurse practitioner since 1978 in another state. The Oregon State Board of Nursing first licensed her by endorsement, as a Registered Nurse in December 1999 and Nurse Practitioner in January 2000.

Licensee has been in private but collaborative family practice at Brookings Harbor Medical Center in Brookings, Oregon since December 2000.

History of the Case:

In February 2010, the Board received a complaint, which alleged that Licensee failed to diagnose a patient who later died of leukemia. The Board opened an investigation into the matter. During the course of that investigation, the Board received additional complaints regarding Licensee's practice including one regarding Licensee's alleged failure to recognize a breast lump and refer the patient in a timely manner.

Licensee voluntarily removed herself from practice during the course of the Board investigation by signing an Interim Order by Consent on June 11, 2010.

The Board deemed it necessary to subpoena patient records in this case. Of those charts requested Board staff found that Licensee altered at least six patient chart records, including at least one progress note relating to the patient with leukemia. It was also determined that in all of the cases other than the patient with leukemia, Licensee altered the patient records prior to clinic staff sending the documents to the Board. Licensee had full knowledge that the Board subpoenaed the documents. Licensee made additions to the records without designating the additions as "late entry" or "addendum". Licensee originally penned the majority of the altered chart notes several years prior to making the additions. Licensee's actions placed the validity of any documentation she provided in question.

Documentation Concerns:

Licensee was frequently behind with her required documentation. Licensee admits that this did place patients at risk. Licensee frequently took patient charts home with her to complete and kept the records in her car. Though Licensee maintains that patient confidentiality was always a priority, this lack of organization resulted in charts being misplaced, and the delay of referrals and other time sensitive actions. Moreover, patient records did not meet the standard of being accurate, complete and timely.

Inappropriate Prescribing and Use of Poly-pharmacy:

During the investigation, Board staff reviewed at least 20 of Licensee's patient charts. Licensee frequently prescribed large amounts of narcotics and other controlled substances to many of her patients for extended periods and for reasons often undocumented. Many of the patients that Licensee prescribed to received refills and changes in their prescriptions with insufficient office visits and ongoing assessments by Licensee.

Chart reviews showed that Licensee rarely utilized medication agreements with those patients whom she prescribed narcotics to for extended periods and that there was little or no documentation of medication teaching or efforts to taper the patients off the drugs in most cases. In several reviewed cases, patients would request and have refills approved early without question.

Pharmacy records were subpoenaed and reviewed and frequently did not reconcile with records kept at the clinic; office medication logs did not reconcile with actual prescriptions written.

Licensee acknowledged that her prescribing practices were not according to standard. She stated that though there is no chart record of even minimally acceptable patient check-in for many of those patients receiving controlled substances over an extended time, she was making frequent phone assessments and talking to them regularly. However, Licensee was not aware that at least one of her patients for whom she prescribed controlled substances to for an extended time lived some four (4) hours away from Brookings. Licensee said that she found it difficult to tell her patients "no" and that she was "over her head" concerning narcotic prescribing.

In at least one case, there is no assessment, teaching or subsequent progress notes for a patient who received ongoing birth control injections. The entire patient chart consists of documentation by one of the clinic's medical assistant's documentation of administration of the injection.

Nurse/Client Boundary Violations:

Licensee failed to maintain professional boundaries with clients on more than one occasion when she borrowed from one patient \$1000.00 and from another \$5000.00. Licensee paid the \$1000.00 back but initially made that payment with a check written on insufficient funds. According to Licensee's testimony, she still owes the second patient the sum of \$2000.00.

By the previously described actions, Licensee is subject to discipline pursuant to violations of ORS 678.111 (1) (b) and (d) and (f); (2); OAR 851-045-0070 (1) (a) and (n); (2) (h) and (o); (3) (a) and (b) and (c) and (d) and (g); (4) (b); (7) (a) and (b) and (c); OAR 851-050-0005 (4) (a) and (b) and (c) and (d) and (e); (5) (a) and (b) and (c) and (d) and (g) and (h) and (i) and (k) and (l); (7); OAR 851-056-0004 (1); OAR 851-056-0016 (1) and (2) (b) and (c) and (f) and (h) which reads as follows:

678.111 Causes for denial, revocation or suspension of license or probation, reprimand or censure of licensee. In the manner prescribed in ORS chapter 183 for a contested case:

- (1) Issuance of a license to practice nursing, whether by examination or by endorsement, of any person may be refused or the license may be revoked or suspended or the licensee may be placed on probation for a period specified by the Oregon State Board of Nursing and subject to such conditions as the board may impose or may be issued a limited license or may be reprimanded or

censured by the board, for any of the following causes:

- (b) Gross incompetence or gross negligence of the licensee in the practice of nursing at the level for which the licensee is licensed.
 - (d) Fraud or deceit of the licensee in the practice of nursing or in admission to such practice.
 - (f) Conduct derogatory to the standards of nursing.
- (2) A certificate of special competence may be denied or suspended or revoked for the reasons stated in subsection (1) of this section.

Conduct Derogatory to the Standards of Nursing Defined

851-045-0070

Nurses, regardless of role, whose behavior fails to conform to the legal standard and accepted standards of the nursing profession, or who may adversely affect the health, safety, and welfare of the public, may be found guilty of conduct derogatory to the standards of nursing. Such conduct shall include, but is not limited to the following:

- (1) Conduct related to the client's safety and integrity:
 - (a) Developing, modifying, or implementing standards of nursing practice/care which jeopardize patient safety.
 - (n) Failing to maintain professional boundaries with a client.
- (2) Conduct related to other federal or state statute/rule violations:
 - (h) Using the nurse client relationship to exploit the client by gaining property or other items of value from the client either for personal gain or sale, beyond the compensation for nursing services.
 - (o) Failing to dispense or administer medications, including Methadone, in a manner consistent with state and federal law.
- (3) Conduct related to communication:
 - (a) Inaccurate recordkeeping in client or agency records.
 - (b) Incomplete recordkeeping regarding client care, including, but not limited, to failure to document care given or other information important to the client's care or documentation which is inconsistent with the care given.
 - (c) Falsifying a client or agency record or records prepared for an accrediting or credentialing entity, including, but not limited to, filling in someone else's omissions, signing someone else's name, record care not given, and fabricating data/values.
 - (d) Altering a client or agency record or records prepared for an accrediting or credentialing entity, including by not limited to changing words/letters/numbers from the original document to mislead the reader of the record, adding to the record after the original time/date without indicating a late entry.
- (4) Conduct related to achieving and maintaining clinical competency:
 - (b) Failing to conform to the essential standards of acceptable and prevailing nursing practice. Actual injury need not be established.
- (7) Conduct related to the licensee's relationship with the Board:
 - (a) Failing to provide the Board with any documents requested by the Board.
 - (b) Failing to answer truthfully and completely any question asked by the Board on an application for licensure or during the course of an investigation or any other question asked by the Board.
 - (c) Failing to fully cooperate with the Board during the course of an investigation, including but not limited to, waiver of confidentiality privileges, except client-attorney privilege.

Nurse Practitioner Scope of Practice

851-050-0005

- (4) Within his or her specialty, the nurse practitioner is responsible for managing health problems encountered by the client and is accountable for health outcomes. This process includes:
 - (a) Assessment
 - (b) Diagnosis;
 - (c) Development of plan;
 - (d) Intervention;
 - (e) Evaluation;
- (5) The nurse practitioner is independently responsible and accountable for the continuous and comprehensive management of a broad range of health care, which may include:
 - (a) Promotion and maintenance of health;
 - (b) Prevention of illness and disability;
 - (c) Assessment of clients; synthesis and analysis of data and application of nursing principles and therapeutic modalities;
 - (d) Management of health care during acute and chronic phases of illness;
 - (g) Consultation and/or collaboration with other health care providers and community resources;
 - (h) Referral to other health care providers and community resources;
 - (i) Management and coordination of care;
 - (k) Diagnosis of health/illness status;
 - (l) Prescribing, dispensing, and administration of therapeutic devices and measures, including legend drugs and controlled substances as provided in Division 56 of the Oregon Nurse Practice Act, consistent with the definition of the practitioner's specialty category and scope of practice.
- (7) The nurse practitioner is responsible for recognizing limits of knowledge and experience and for resolving situations beyond his/her nurse practitioner expertise by consulting with or referring clients to other health care providers.

Prescriptive Authority Scope of Practice

851-056-0004

- (1) Prescribing, procuring or authorizing use of legend drugs, controlled substances, therapeutic devices, and other measures, and dispensing drugs consistent with the individual's scope of specialty practice, and competency.

Conduct Derogatory to the Standards for Prescriptive or Dispensing Authority

851-056-0016

- (1) The Board may deny, suspend or revoke the authority to write prescriptions and/or dispense drugs for the causes identified in ORS 678.111 (1) or with proof that the authority has been abused.
- (2) The abuse of the prescriptive or dispensing authority constitutes conduct derogatory to the nursing standards and is defined as:
 - (b) Prescribing, dispensing, administering, or distributing drugs for other than therapeutic or prophylactic purposes;
 - (c) Prescribing, dispensing, or distributing drugs to an individual who is not the clinical nurse specialist's or nurse practitioner's client unless written under Expedited Partner Therapy guidelines from the Department of Human Services or is not within the scope of practice or type of client population served;

- (f) Prescribing, dispensing, administering, or distributing drugs in an unsafe or unlawful manner or without adequate instructions to the client according to acceptable and prevailing standards of practice.
- (h) Failure to properly assess and document client assessment when prescribing, dispensing, administering, or distributing drugs.

Licensee acknowledges that if the case were to proceed to hearing, the Oregon State Board of Nursing would present evidence of the above allegations.

Licensee wishes to cooperate with the Board in resolving the matter. Licensee has agreed to surrender her Registered Nurse license and Nurse Practitioner certification with prescriptive privileges.

Licensee agrees to the following and it will be proposed to the Oregon State Board of Nursing:

That the voluntary surrender of the Registered Nurse license and Nurse Practitioner certificate with Prescriptive Privileges of Ellen Ruth Winger be accepted. Licensee may not apply to the Board to reinstate her licensure for at least (3) three years from June 11, 2010, the date she signed the Interim Order by Consent and removed herself from practice. If, at a future date, she wishes to reinstate her license, she may appear before the Board to request reinstatement of her Registered Nurse license and Nurse Practitioner certification with prescriptive privileges. Licensee must provide evidence to the Board that she is safe to practice nursing at the level licensed. Should the Board reinstate the license, Licensee would be subject to whatever terms and conditions the Board may impose.

Licensee understands that this stipulation will be submitted to the Board for approval and is subject to the Board's confirmation.

Licensee understands that by signing this stipulated agreement she waives the right to an administrative hearing.

Licensee understands that this document will become a public record when the Board issues an order implementing it.

Licensee acknowledges that no promises, representations, duress or coercion have been used to induce her to sign this stipulation.

Licensee has read the stipulation, understands the stipulation completely and freely signs the stipulation.

Dated this 11th day of September 2010

Ellen Ruth Winger
Ellen Ruth Winger

FOR THE BOARD OF NURSING OF THE STATE OF OREGON

Marilyn L. Hudson
Marilyn Hudson, RN, MSN, CNS, FRE
Investigations Manager (interim)
Investigations Department

Kimberly A. Wood
Kimberly A. Wood, BSN, RN, BC
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